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COUNTERPART NO. 2  
OF 7 COUNTERPARTS

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INTERSTATE COMMERCE COMMISSION

AGREEMENT

Dated as of September 1, 1970

between

ACF INDUSTRIES, INCORPORATED

and

THE BALTIMORE AND OHIO RAILROAD COMPANY

- - - - -

Covering

64 60' 70-Ton Auto Parts Box Cars  
36 60' 100-Ton Auto Parts Box Cars  
114 50' 70-Ton Rigid Underframe Box Cars

THIS AGREEMENT, dated as of September 1, 1970, by and between ACF INDUSTRIES, INCORPORATED, a New Jersey corporation (Manufacturer), and THE BALTIMORE AND OHIO RAILROAD COMPANY, a Maryland corporation (B&O);

WITNESSETH :

The Manufacturer and B&O heretofore entered into letter Agreements dated April 24, 1970 and May 5, 1970 (copies of which Letter Agreements are made a part hereof by reference), whereunder the Manufacturer agreed to construct and deliver to B&O, and B&O agreed to accept and pay for the following railroad equipment (Cars):

64 60' 70-ton auto parts box cars, to bear B&O's road numbers 491430 - 491493, inclusive,

36 60' 100-ton auto parts box cars, to bear B&O's road numbers 495291 - 495326, all inclusive, and

114 50' 70-ton rigid underframe box cars, to bear B&O's road numbers 485200 - 485313, all inclusive.

Delivery of the Cars by the Manufacturer to B&O is scheduled to begin on or about September 15, 1970. However, inasmuch as B&O has not as yet consummated financing arrangements (pursuant to an Equipment Trust Agreement to be dated as of September 1, 1970, or otherwise), it is not in position to accept delivery of and pay for the Cars under the terms of the letter Agreements at this time. B&O represents that such financing arrangements will be consummated, however, on or before November 15, 1970. B&O (in order that it may use the Cars pending completion of the above financing arrangement) has arranged with the Manufacturer to give it temporary custody and possession of the Cars on their completion,

solely as a bailee of the Cars, and the Manufacturer is willing to do so upon the terms and conditions hereinafter stated.

In consideration of the premises, the Manufacturer hereby delivers to B&O and B&O hereby accepts from the Manufacturer the Cars as of the date each of them is delivered to B&O at St. Louis, Missouri, for the period ending on the earlier of November 15, 1970, or the date of consummation of the above financing arrangement. At such time this Agreement shall automatically be cancelled and superseded without further action by or notice to any party concerned.

Title to the Cars shall remain in the Manufacturer and B&O's right and interest therein is and shall be solely that of possession, custody and use as bailee under this Agreement. Transfer of title shall be effected only at the time of delivery of the bills of sale. B&O, without expense to the Manufacturer, will promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation under Section 20c of the Interstate Commerce Act. In addition, B&O shall do such other acts as may be required by law, or reasonably requested by the Manufacturer, for the protection of the Manufacturer's title to and interest in the Cars.

B&O agrees that it will permit no liens of any kind to attach to the Cars; and that it will

- (a) indemnify and save harmless the Manufacturer from any and all claims, expenses or liabilities of whatsoever kind; and

- (b) pay any and all taxes, fines, charges and penalties that may accrue or be assessed or imposed upon the Cars of the Manufacturer because of its ownership or because of the use, operation, management or handling of the Cars by B&O during the term of this Agreement.

B&O's obligation contained in this paragraph shall survive the termination by mutual agreement or otherwise of this Agreement.

B&O will, at its own expense, keep and maintain the Cars in good order and running condition and will at its option repair or replace or promptly pay to the Manufacturer the purchase price in cash of those Cars which may be damaged or destroyed by any cause during the term of this Agreement.

Prior to the delivery of each Car to B&O under this Agreement it will be numbered with a road number as hereinbefore indicated, and there shall be plainly, distinctly, permanently and conspicuously marked upon each side of each Car, in contemplation of the financing heretofore referred to, the following legend in letters not less than one inch in height:

"OWNED BY A BANK OR TRUST COMPANY UNDER A  
SECURITY AGREEMENT FILED UNDER THE INTER-  
STATE COMMERCE ACT, SECTION 20c."

B&O hereby agrees to indemnify the Manufacturer against any liability, loss or expense incurred by it as a result of the placing of the aforementioned markings on the Cars.

In case, during the continuance of this Agreement, such markings shall at any time be removed, defaced or destroyed on any Car, B&O shall immediately cause the same to be restored or replaced.

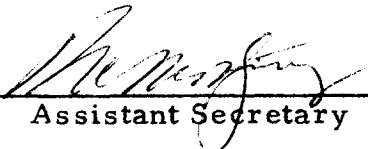
All or any of the rights, benefits or advantages of the Manufacturer, including the right to receive the purchase price of the Cars as provided in the letter Agreements, may be assigned by the Manufacturer and reassigned by any assignee at any time or from time to time, provided, however, that no such assignment shall subject any such assignee to any of the Manufacturer's warranties, indemnities or any other obligations contained in this Agreement or in the letter Agreements relating to the Cars. In the event the Manufacturer assigns its rights to receive the payments herein and/or under the letter Agreements, and B&O receives written notice thereof from the Manufacturer together with a counterpart of such assignment stating the identity and the post office address of the assignee, all payments thereafter to be made by B&O under this Agreement shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to B&O.

In the event of any assignment by the Manufacturer of its rights to receive any payments under this Agreement or under the letter Agreements, the rights of such assignee to such payments as may be assigned together with any other rights hereunder which can be and are so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer in respect to the Cars, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to B&O by the Manufacturer. Any and all of such obligations howsoever arising, shall be and remain

enforceable by B&O, its successors and assigns, only against the Manufacturer and its successors and assigns (other than assignees as such of rights, benefits or advantages assigned pursuant to this Agreement).

B&O agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to B&O of the Cars, as contemplated by this Agreement, shall not relieve B&O of its obligations to accept, take and pay for the Cars in accordance with the terms of the letter Agreements, or impair any of the Manufacturer's rights under the letter Agreements.

Attest:  
(Corporate Seal)

  
Assistant Secretary

ACF INDUSTRIES, INCORPORATED

By   
Vice President

Attest:  
(Corporate Seal)

  
Assistant Secretary

THE BALTIMORE AND OHIO  
RAILROAD COMPANY

By   
Treasurer

RECEIVED  
BY  
R & H

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF NEW YORK)

On this 10<sup>th</sup> day of September, 1970, before me personally appeared W. W. WILSON, to me personally known, who, being by me duly sworn, says that he is a Vice-President of ACF INDUSTRIES, INCORPORATED, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Notarial Seal)

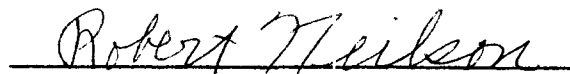
  
Notary Public

EDWIN F. MEYER  
NOTARY PUBLIC, State of New York  
No. 30-7917803  
Qualified in Nassau County  
Certificate filed in New York County  
Commission Expires March 30, 1972

STATE OF MARYLAND)  
 ) ss:  
CITY OF BALTIMORE )

On this 4<sup>th</sup> day of September, 1970, before me personally appeared L. C. Roig, Jr., to me personally known, who being by me duly sworn, says that he is the Treasurer of THE BALTIMORE AND OHIO RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its President and Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Notarial Seal)

  
Notary Public

My Commission expires July 1, 1974.